IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.997 of 2007

Latha .. Petitioner

Vs

1. State rep. by its
Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-600 009.

2. The District Magistrate and
District Collector
Vellore District @ Vellore. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.O.S.Thilak Pasumbadiar
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Made by P.D.DINAKARAN,J.)

Aggrieved by the order of detention dated 5.7.2007 made in Ref.No.C3.D.O.No.49/2007 passed by the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) to detain one Sivaji, son of Munisamy, branding him as a Bootlegger, the petitioner, who is the wife of the detenu, filed the above petition seeking to quash the order of detention and to direct the respondents to produce the detenu, who is now confined at Central Prison, Vellore before this Court and set him at liberty.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. On 18.6.2007, the Inspector of Police, Arakonam Taluk Circle, found the detenu selling illicit arrack containing atropine of 6.7 mg per 100 ml, as per the chemical analysis report. A case was registered in Crime No.240/2007 under Sections 4(1)(i), 4(1)(aaa) and 4(1-A)(ii) of the Tamil Nadu Prohibition Act.

3. The second respondent, taking note of the above case as a ground case and finding that there are five adverse cases, ordered his detention dubbing him as a bootlegger.

4. The learned counsel for the petitioner challenges the impugned order of detention only on the ground of delay in preparing the rejection order.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the Government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. Coming to the the case on hand, admittedly, objecting to the order of detention dated 5.7.2007, a representation was made on behalf of the detenu on 7.8.2007, which was received by the Government on 9.8.2007. Remarks were called for from the detaining authority on 9.8.2007, which was received by the detaining authority on the same day, viz. 9.8.2007. The detaining authority, in turn, called for parawar remarks from the sponsoring authority on 14.8.2007 and on receipt of the same on 21.8.2007, the detaining authority sent it to the Government on 22.8.2007 and the same was received on 22.8.2007 itself. Thereafter, the file was submitted on 24.8.2007 and the same was considered by the Under Secretary and Additional Secretary on 29.8.2007. The file was considered by the Minister on 30.8.2007. However, the rejection letter was prepared on 6.9.2007, after a delay of seven days, which is not properly explained. Even taking note of the intervening holidays, viz., 1.9.2007 and 2.9.2007 (being Saturday and Sunday), the delay of five days in preparing the order of rejection, is admittedly unexplained and inexcusable. Thereafter, the order of rejection was sent on 8.9.2007 and served on the detenu on 10.9.2007.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

9. In the instant case, there is delay of five days in preparing the order of rejection on the detenu, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition.

In the result, the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

kpl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The District Magistrate and
   District Collector
   Vellore District @ Vellore.

3. The Superintendent of Central Prison
   Vellore.

4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to the Government,
Public (Law and Order) Department,
Fort St George, Chennai 9.

NG(CO)
SR/5.11.2007

HCP No.997 of 2007.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/